

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

**In Re TERRORIST ATTACKS on
SEPTEMBER 11, 2001**

03 MDL 1570 (RCC)

KATHLEEN ASHTON et al.,
Plaintiffs,

02 CV 6977 (RCC)

v.

AL QAEDA ISLAMIC ARMY et al.,
Defendants.

AFFIDAVIT OF MITCHELL R. BERGER

1. I am a member of the law firm of Patton Boggs LLP, attorneys for Defendant The National Commercial Bank ("NCB") and am a member of the bar of this Court. I respectfully submit this Affidavit in support of NCB's motion to dismiss this action. This Affidavit is based upon personal knowledge of the facts set forth herein.

2. NCB has moved to dismiss with prejudice all claims in this action against it for lack of subject matter jurisdiction (FRCP 12(b)(1)), lack of personal jurisdiction (FRCP 12(b)(2)), and failure to state a claim upon which relief may be granted (FRCP 12(b)(6)), as more fully set forth in the Memorandum of Law submitted herewith.

3. Plaintiffs' allegations against NCB, and NCB's motion to dismiss, in this action raise issues that are essentially identical to those raised in *Burnett et al. v. Al Baraka et al.*, MDL 1570, Case No. 03-CV-9849 ("*Burnett*"), which has been consolidated with this action for pre-trial proceedings pursuant to 28 U.S.C. § 1407. Because of the overlap between the *Burnett* and *Ashton* actions, the exhibits supporting NCB's motion to dismiss in *Burnett* are attached to this Affidavit and submitted as exhibits in support of NCB's motion to dismiss this action as well. For the same reason, and in

the interest of judicial economy, and to further the purposes of a § 1407 transfer, NCB respectfully requests that the Court address NCB's motions to dismiss *Burnett* and *Ashton* at the same time.

4. Exhibit 1 is a true and correct copy of the Declaration of Ambassador Chas. W. Freeman, Jr., dated August 3, 2003, originally submitted in support of NCB's motion to dismiss in *Burnett*, filed in the United States District Court for the District of Columbia on October 14, 2003, Docket Nos. 358, 359.

5. Exhibit 2 is a true and correct copy of the Supplementary Declaration by Ambassador Freeman, dated September 23, 2003, originally submitted in support of NCB's *Burnett* motion to dismiss.

6. Exhibit 3 is a true and correct copy of the letter from William J. Burns, U.S. Assistant Secretary of State to The Honorable Jim Kolbe, Chairman Sub-Committee on Foreign Operations United State House of Representatives, originally submitted in support of NCB's *Burnett* motion to dismiss.

7. Exhibit 4 is a true and correct copy of the English translation of the Affidavit of Abdallah Bin Hamad Al-Wohaibi and accompanying exhibits (together with true and correct copies of the Arabic originals of the Affidavit and exhibits), dated August 24, 2003, originally submitted in support of NCB's *Burnett* motion to dismiss.

8. Exhibit 5 is a true and correct copy of the Declaration of Jorge Juco and accompanying exhibits, dated September 22, 2003, originally submitted in support of NCB's *Burnett* motion to dismiss.

9. Exhibit 6 is a true and correct copy of the English translation of the Supplemental Affidavit of Abdallah Bin Hamad Al-Wohaibi, dated February 15, 2004, together with the Certificate of Accuracy of Translation of Abdulaziz H. Al Fahad, dated March 1, 2004, originally submitted in support of NCB's *Burnett* motion to dismiss.

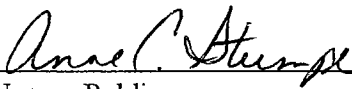
10. Exhibit 7 is a true and correct copy of the Declaration of Nizar Bin Obaid Madani, dated February 21, 2004, originally submitted in support of NCB's *Burnett* motion to dismiss.

WHEREFORE, for the reasons set forth in the accompanying Memorandum of Law, and in the exhibits hereto, NCB respectfully requests that the Court grant its motion to dismiss this action with prejudice, and grant such other and further relief as the Court deems just and proper.



Mitchell R. Berger

Sworn to before me this 19th day of
March 2004



Notary Public

Anne C. Stumpe
Notary Public, District of Columbia
My Commission Expires 12-14-2006

